

Do you 'like' libel...? Liability for libel on social media

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A Swiss court has found an individual liable in libel for 'liking' a defamatory posting on Facebook.

At first glance, this is fodder for the 'free speech at all costs' brigade to lament the chilling of free speech, which can occur, especially in the pages of the mainstream British press, when anyone is found liable in libel. But in fact, the decision is not surprising – and we can, and perhaps should, if we are concerned about the protection of reputation, expect similar findings in our own domestic courts.

In the Swiss case – according to a post in *The Brief*, for *The Times* – the claimant was the head of an animal protection group accused in a discussion on Facebook of being anti-Semitic and racist. The claimant 'liked' several of the posts in the discussion. But by doing so, he was not only endorsing them, but he was spreading them further, republishing them – and thereby attracting his own legal liability.

Traditionally in the courts of England and Wales, anyone involved in the journey of a libel from original source to ultimate recipients can be liable. After all, every new publication spreads the libel and increases the harm. So 'liking' a defamatory publication online invites others to read it. Which effectively amounts to republication.

If technology is the hare in the story of the hare and the tortoise, then in the world of social media the law is usually the tortoise, lagging far behind. But, as in the apocryphal story, this case shows that the law in fact can still win with race without social media rushing off with impunity into ungoverned expanses of the online world. The longstanding, traditional laws of libel may at times appear not to fit the new social media kid on the block. But going back to basics, and applying traditional publication rules to modern communication methods, can achieve a common sense result. And it is common sense results, fairly balancing free speech and the ability to discuss on the one hand, with the important rights to reputation and privacy on the other, that we need to govern the online world.

The warning for anyone posting or communicating on line – whether with a lengthy, well thought-out argument, a swift Tweet, or a momentary 'like' – is to imagine themselves the editor of their own online publication; and to remember that when they press 'send' they are taking responsibility for what they are asking the wider world to read, whether they originated the allegations or not.

As I commented for *The Brief*, 'in the whirlwind world of social media where people rarely stop to think before forwarding, sharing and liking, they are playing a dangerous game of pass the libel parcel, where damages, costs and a permanent injunction may be the 'prize' they unhappily unwrap when the litigation music stops'.

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